

HAWAII CIVIL RIGHTS COMMISSION

STATE OF HAWAII

Petitioner,)	Docket No. DR 92-003
)	
vs.)	
)	
LINDA C. TSEU, Executive)	
Director, Hawaii Civil Rights)	
Commission,)	
)	
Respondents)	
)	

ORDER GRANTING PETITION FOR DECLARATORY RELIEF

I. INTRODUCTION

Petitioner filed a Petition for Declaratory Relief on April 29, 1992, seeking a declaration whether "sex-differentiated hair length regulations that are not used to prevent or hinder the employment of one sex group as compared to another constitutes a discriminatory practice under \square 378-2(1) Haw. Rev. Stat." Petition at 3.

The Executive Director filed a Memorandum in Opposition on May 19, 1992, pursuant to a Stipulation filed on May 13, 1992, which agreed to an extension of fifteen day filing deadline. On May 26, 1992, the Executive Director filed as an exhibit to the Memorandum the grooming standards of the EEOC Compliance Manual, Section 619. \square

II. DISCUSSION

A. REDACTION OF THE PETITION

As a preliminary matter, the Commission will discuss the propriety of redacting portions of the Petition. The Commissioners were provided with copies of the Petition which had the parties' identities and facts, unrelated to the issue, redacted by Commission Counsel. The Parties were notified and provided with copies of the redacted petition. Redaction was done because the case may subsequently come before the Commissioners in a hearing on the merits; the redacted parts contain matters which could become factual issues in the merits hearing; and they were deemed unnecessary to decide the Petition.

The Commission approves of redaction by its Counsel in cases which have not been docketed for hearing where an investigation has not been conducted nor a cause determination made, as long as the Commission has enough information to properly decide the Petition. The Commission is concerned that it may later be precluded from deciding the merits of the case if disputed factual matters are presented. The official Commission file will consist of the redacted documents.

B. SEX-DIFFERENTIATED GROOMING STANDARDS

Petitioner contends that the majority of courts which have considered the issue have held that sex-differentiated grooming standards do not constitute unlawful discrimination based upon sex. See e.g., *Dodge v. Giant Food, Inc.*, 488 F.2d 1333 (D.C. Cir. 1973); *Willingham v. Macon Telegraph Publishing Co.*, 507 F.2d 1084 (5th Cir. 1975). The majority of these courts have decided the issue in the context of Title VII of the Civil Rights Act of

1964. There are no Hawaii cases which have decided the issue under state employment discrimination law, H.R.S. Chapter 378. Petitioner seeks a declaration that its grooming standards which establish different hair length requirements for males and females do not violate state law prohibiting employment discrimination based upon sex.

The Executive Director's Memorandum in Opposition agrees with the Petition to the extent that sex-differentiated grooming standards do not constitute sex discrimination under H.R.S. § 378-2(1). However, The Executive Director takes the position that an investigation should be permitted to determine if such grooming standards are being discriminatorily enforced based upon sex or any other protected basis as allowed under EEOC guidelines. Under EEOC guidelines, sex-differentiated grooming standards are considered not to be per se discrimination on the basis of sex, however, EEOC conducts an inquiry into the enforcement by the employer of such grooming standards.

III. DECISION

The Commission hereby grants the Stipulation to extend the fifteen day period to file the Memorandum In Opposition. In light of the Executive Director's agreement with the Petitioner's position, the Commission hereby decides that sex-differentiated hair length standards do not per se constitute sex discrimination in violation of H.R.S. § 378-2(1). This decision is only limited to hair length standards and does not encompass facial hair standards, such as beards and mustaches, or other grooming standards. The Commission did not have facial hair or any other grooming standards before it other than hair length. This decision does not cover grooming standard challenges based upon racial, religious, or other protected bases other than sex.

The Commission also adopts the EEOC guidelines insofar as they permit an investigation into whether sex-differentiated hair length standards are being discriminatorily enforced on the basis of sex or any other protected basis.

IV. ORDER

IT IS HEREBY ORDERED THAT the Petition for Declaratory Relief is summarily granted under the authority of H.A.R. § 12-46-63(b)(1). The Commission declares that sex-differentiated hair length standards do not per se constitute discrimination based upon sex. The Commission is authorized to investigate sex-differentiated hair length cases under the EEOC guidelines to determine if there is discriminatory enforcement of these standards.

Petitioner may seek reconsideration under H.A.R. § 12-46-38 by filing a motion with ten days of receipt of this order. Petitioner may seek judicial review in the circuit court under H.R.S. §§ 91-8 and 14 within thirty days after service of the final decision and order.

Dated: Honolulu, Hawaii, June 9, 1992.

Amefil Agbayani
Chairperson

Hawaii Civil Rights Commission